

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

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Subpart A—General

§ 1902.1 Purpose and scope.

(a) This part applies the provisions of section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) relating to State plans for the development and enforcement of State occupational safety and health standards. The provisions of the part set forth the procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order No. 12-71, 36 FR 8754, May 12, 1971) will approve or reject State plans submitted to the Secretary. In the Act, Congress declared it to be its purpose and policy “* * * to assure so far as possible every working man and woman in the Nation

safe and healthful working conditions and to preserve our human resources” by, among other actions and programs, “* * * encouraging the State to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws. Section 18(a) of the Act is read as preventing any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued under section 6 of the Act. However, section 18(b) provides that any State that desires to assume responsibility for the development and enforcement therein of occupational safety and health standards relating to issues covered by corresponding standards promulgated under section 6 of the Act shall submit a plan for doing so to the Assistant Secretary.

(b) Section 18(c) of the Act sets out certain criteria that a plan which is submitted under section 18(b) of the Act must meet, either initially or upon modification, if it is to be approved. Foremost among these criteria is the requirement that the plan must provide for the development of State standards and the enforcement of such standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 of the Act which relate to the same issues.

(c)(1) If the Assistant Secretary approves a State plan submitted under section 18(b), he may, but is not required to, exercise his enforcement authority with respect to Federal standards corresponding to standards approved under the plan until he determines, in accordance with section 18(e) of the Act, on the basis of actual operations under the plan, that the State is applying the criteria of section 18(c) of the Act. The Assistant Secretary shall not make this determination (i) for at least 3 years after initial approval of the plan, and (ii) in the case of a developmental plan approved under § 1902.2(b), until the State has completed all the steps specified in its plan which are designed to make it at least as effective as the Federal program and the Assistant Secretary has had at

least 1 year in which to evaluate the program on the basis of actual operations. After the determination that the State is applying the criteria of section 18(c) of the Act, the Assistant Secretary’s enforcement authority shall not apply with respect to any occupational safety or health issue covered by the plan. Notwithstanding plan approval and a determination under section 18(e) that the section 18(c) criteria are being followed, the Assistant Secretary shall make a continuing evaluation, as provided in section 18(f) of the Act, of the manner in which the State is carrying out the plan.

(2) Federal enforcement authority which must be retained by the Assistant Secretary until actual operations prove the State plan to be at least as effective as the Federal program, will be exercised to the degree necessary to assure occupational safety and health. Factors to be considered in determining the level of Federal effort during this period include:

(i) Whether the plan is developmental (i.e., approved under § 1902.2(b)) or complete (i.e., approved under § 1902.2 (a)).

(ii) Results of evaluations conducted by the Assistant Secretary.

(3) Whenever the Assistant Secretary determines, after giving notice and affording the State an opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the plan or any assurance contained therein, he shall withdraw approval of such plan in whole or in part, and upon notice the State shall cease operations under any disapproved plan or part thereof, except that it will be permitted to retain jurisdiction as to any case commenced before withdrawal of approval whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(4) A determination of approval of a State plan under section 18(e) does not affect the authority and responsibility of the Assistant Secretary to enforce Federal standards covering issues not included under the State plan.

(d) The policy of the Act is to encourage the assumption by the States of the fullest responsibility for the development and enforcement of their own

occupational safety and health standards. This assumption of responsibility is considered to include State development and enforcement of standards on as many occupational safety and health issues as possible. To these ends, the Assistant Secretary intends to cooperate with the States so that they can obtain approval of plans for the development and enforcement of State standards which are or will be at least as effective as the Federal standards and enforcement.

(e) After the Assistant Secretary has approved a plan, he may approve one or more grants under section 23(g) of the Act to assist the State in administering and enforcing its program for occupational safety and health in accordance with appropriate instructions or procedures to be promulgated by the Assistant Secretary.

[36 FR 20751, Oct. 29, 1971, as amended at 61 FR 9230, Mar. 7, 1996]

§ 1902.2 General policies.

(a) *Policy.* The Assistant Secretary will approve a State plan which provides for an occupational safety and health program with respect to covered issues that in his judgment meets or will meet the criteria set forth in § 1902.3. Included among these criteria is the requirement that the State plan provide for the development and enforcement of standards relating to issues covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under section 6 of the Act on the same issues. In determining whether a State plan satisfies the requirement of effectiveness, the Assistant Secretary will measure the plan against the indices of effectiveness set forth in § 1902.4.

(b) *Developmental plan.* A State plan for an occupational safety and health program may be approved although, upon submission it does not fully meet the criteria set forth in § 1902.3, if it includes satisfactory assurances by the State that it will take the necessary steps to bring the State program into conformity with these criteria within the 3-year period immediately following the commencement of the plan's operation. In such case, the

State plan shall include the specific actions it proposes to take and a time schedule for their accomplishment not to exceed 3 years, at the end of which the State plan will meet the criteria in § 1902.3. A developmental plan shall include the date or dates within which intermediate and final action will be accomplished. If necessary program changes require legislative action by a State, a copy of a bill or a draft of legislation that will be or has been proposed for enactment shall be submitted, accompanied by (1) a statement of the Governor's support of the legislation and (2) a statement of legal opinion that the proposed legislation will meet the requirements of the Act and this part in a manner consistent with the State's constitution and laws. On the basis of the State's submission the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the State plan will meet the criteria in § 1902.3 within the indicated 3-year period. In such case, the Assistant Secretary shall not make a determination under section 18(e) of the Act that a State is fully applying the criteria in § 1902.3 until the State has completed all the developmental steps specified in its plan which are designed to make it at least as effective as the Federal program, and the Assistant Secretary has had at least 1 year to evaluate the plan on the basis of actual operations. If at the end of 3 years from the date of commencement of the plan's development, the State is found by the Assistant Secretary, after affording the State notice and opportunity for a hearing, not to have substantially completed the developmental steps of the plan, the Assistant Secretary shall withdraw the approval of the plan.

(c) *Scope of State plan.* (1) A State plan may cover any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. An "issue" is considered to be an industrial, occupational or hazard grouping which is at least as comprehensive as a corresponding grouping contained in (i) one or more sections in subpart B or R of part 1910 of this chapter, or (ii) one or more of the remaining subparts of part 1910. However, for cause shown